SHARTSIS FRIESE LLP
ZESARA C. CHAN (Bar #136302)
TRACY A. DONSKY (Bar #197114)
One Maritime Plaza, 18th Floor
San Francisco, California 94111-3598
Telephone: (415) 421-6500
Facsimile: (415) 421-2922

Attorneys for Defendants
MARTINDALE-HUBBELL AND
LEXIS/NEXIS, divisions of
REED ELSEVIER, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

INHERENT.COM aka INHERENT, INC. Plaintiff, v. MARTINDALE-HUBBELL, LEXIS/NEXIS INC. and DOES 1 through 200 inclusive, Defendants.	No. C 05 3515 MHP **DEFENDANTS' REQUEST FOR JUDICIAL NOTICE PURSUANT TO FEDERAL RULE OF EVIDENCE 201(d)** Date: October 31, 2005 Time: 2:00 p.m. Courtroom: 15 Judge: Honorable Marilyn H. Patel Complaint Filed: July 29, 2005

Pursuant to Federal Rule of Evidence 201(d), defendants Martindale-Hubbell and Lexis/Nexis, divisions of Reed Elsevier, Inc. (collectively "Defendants"), hereby request that the Court take judicial notice of the documents and pleadings listed below.

Under Rule 201, judicial notice is mandatory if requested by a party who supplies the Court with the necessary information, and the facts requested for notice are "not subject to reasonable dispute" in that they are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." As discussed below, each of the documents for which Defendants seek judicial notice are either publicly filed documents, documents retrieved and printed from a government-controlled and operated website which allows for public search and retrieval of information about the records on file or retained by the government agency, or documents from a reliable source that may be confirmed by research on the internet. As such, the

SHARTSIS FRIESE LLP
ONE MARITIME PLAZA
EIGHTEENTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3598

Dockets.Justia.com

contents of the matters below are not "subject to reasonable dispute" under Rule 201(b) of the Federal Rules of Evidence.

"The most frequent use of judicial notice of ascertainable facts is in noticing the contents of court records." GE Capital Corp. v. Lease Resolution Corp., 128 F.3d 1074, 1082 (7th Cir. 1997) (quoting C. Wright & K. Graham, Jr., Federal Practice & Procedure, 21 Evid. § 5106, at 505 (1st ed. 1977 & Supp. 1997)). A court may properly take judicial notice of schedules and other documents filed in a related action. Frierdich v. Mottaz, 294 F.3d 864, 870 (7th Cir. 2002).

Pages printed from websites available to the public have also been matters accepted for judicial notice. Wible v. Aetna Life Inc. Co., 375 F. Supp. 2d 956, 965-966 (C.D. Cal. 2005); Hall v. Virginia, 385 F.3d 421, 424 n.3 (4th Cir. 2004), cert. denied, 125 S. Ct. 1725 (2005).

Pursuant to Rule 201, and other supporting authority, Defendants hereby request that the Court take judicial notice of the following matters:

1. On July 18, 2005, Reed Elsevier filed a complaint for declaratory relief against Inherent.com, Inc. a/k/a Inherent, Inc. (collectively, "ICI") in the state Superior Court of New Jersey, Union County, Law Division, Docket no. UNN-L-2583 05 ("New Jersey State Action"). A true and correct copy of such complaint is attached hereto as Exhibit A.

2. On August 15, 2005, ICI filed a Notice of Removal of the New Jersey State Action to the United States District Court for the District of New Jersey, Docket 258305. A true and correct copy of such Notice with attached exhibits is attached hereto as Exhibit B.

3. Records from the website of the Corporation Division of the Oregon Secretary of State showing that Inherent.com, Inc. is company registered under the laws of the State of Oregon with its principal place of business listed at 2140 SW Jefferson Street, Suite 200, Portland, Oregon. The President and Secretary of Inherent.com, Inc. is listed as Debra Kamys. Attached hereto as Exhibit C is a true and correct copy of certain documents printed as of August 18, 2005, from the Oregon Secretary of State website showing ICI's incorporation under the laws of the State of Oregon and its principal place of business as Portland, Oregon. See also Declaration of Fernando Marinez submitted concurrently herewith ("Marinez Decl."), ¶ 3].

SHARTSIS FRIESE LLP
ONE MARITIME PLAZA
EIGHTEENTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3598

4. Records from the website of the California Secretary of State showing no record that any business by the name "Inherent.com" or "Inherent, Inc." has been registered with the California Secretary of State as a foreign corporation or has been registered to do business in California. Attached hereto as Exhibit D is a true and correct copy of certain documents collected from the webite for records of the California Secretary of State. See also Marinez Decl., ¶ 4.

5. Records from the website of Inherent.com aka Inherent Inc. located at www.inherent.com. Attached hereto as Exhibit E is a true and correct copy of certain pages from such website. See also, Marinez Decl., ¶ 5.

DATED: September 7, 2005

SHARTSIS FRIESE LLP

By: /s/ Zesara C. Chan
ZESARA C. CHAN

Attorneys for Defendants
MARTINDALE-HUBBELL AND LEXIS/NEXIS, divisions of REED ELSEVIER, INC.

ZCC\7002\001\1317543.01

SHARTSIS FRIESE LLP
ONE MARITIME PLAZA
EIGHTEENTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3598